

Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: HONORABLE SIDNEY F. STRAUSS IA Part 11
Justice

_____ x

In the Matter of the Application of DEEWAN SINGH
and a DANIEL SEWDAT, Holders of Thirty-Three
percent (33.33%) of All Outstanding Certificates

Petitioners,

For the Dissolution of Data Palette Information
Services LLC, a Limited Liability Company.

_____ x

Index
Number 4797 2010
Motion
Date October 27, 2010
Motion
Cal. Number 36

Seq. No. 4

The following papers numbered 1 to 9 read on this motion by respondents for an order dismissing the Amended Petition in this action and awarding sanctions against petitioners and their attorneys.

	Papers <u>Numbered</u>
Notice of Motion - Affidavits - Exhibits.....	1-5
Affirmation in Opposition - Exhibits.....	6-7
Reply Memorandum.....	8-9

Upon the foregoing papers it is ordered that the motion is granted in part and denied in part.

Petitioners hold a minority interest in the entity known as Data Palette Information Services, LLC (Data Palette). They bring a petition to dissolve the entity pursuant to Limited Liability Company Law §702.¹ Pursuant thereto, the Supreme Court may decree dissolution of an entity when “it is not reasonably practicable to carry on the business in conformity with the articles or organization or operating agreement.”

_____ ¹A prior application was denied with leave to renew upon a more definite pleading.

Petitioners herein plead various claims of malfeasance by respondents including improper decision making, improper loans and check signing, and co-mingling of funds. The petitioners maintain that the entity is unable to “properly manage its affairs for the mutual benefit of the members.” They assert that the company has dissolved into two factions and that there is a deadlock preventing the entity from functioning.

Respondents maintain that the amended petition must be dismissed inasmuch as the petitioner cannot establish that 1) the management of the entity is unable or unwilling to reasonably permit or promote the *stated purpose of the entity* to be realized or achieved; or 2) that continuing the entity is financially unfeasible. (*In the Matter of 1545 Ocean Ave.*, 72 AD3d 212 [2010]; *Schindler v Niche Media Holdings, LLC*, 1 Misc 3d 713 [2003] [emphasis added].)

It has been recognized that “dissolution is a drastic remedy” to be used “sparingly.” (*In the Matter of 1545 Ocean Ave, supra.*) The petition seeking dissolution must articulate facts showing why it is not “reasonably practicable” for the entity to continue its business, or that it is failing financially. (*Klein v 599 Eleventh Avenue Co, LLC*, 14 Misc 3d 1211 [2006].) “The language of §702 has been authoritatively held to be plain and unambiguous providing for a strict standard.” (*Horning v Horning Constr., LLC*, 12 Misc 3d 402 [2006].) Moreover, “unlike a complaint in a plenary action, a petition in a special proceeding must be accompanied by competent evidence raising a material issue of fact.” (*Horning v Horning Constr., LLC, supra.*) Here, petitioners do not articulate that Data Palette can no longer meet its business purpose regarding the intake of consumer databases, and do not attach any factual evidence in support of their claims. Moreover, there is no showing that the company is financially unfeasible. A petitioner cannot merely “parrot” the language of Limited Liability Company Law §702, but must plead facts reflecting the inability of the entity to carry on its business in accordance with the articles of organization. (*Klein v 599 Eleventh Avenue Co, LLC, supra.*)

While the court is cognizant that the animosity between the parties may be “palpable,” such frustration alone will not support a petition for dissolution.² (*Widewaters Herkimer Co, LLC, v Aiello*, 28 AD3d 1107 [2006]; *Horning v Horning Constr., LLC, supra.*). The mere allegation of a deadlock is not an independent ground for dissolution pursuant to Limited Liability Company Law §702. (*In the Matter of 1545 Ocean Ave., supra.*) Instead, the court must consider that the alleged deadlock in light of the operating agreement and the continued ability of an entity to function in that context. (*In the Matter of 1545 Ocean Ave,*

² It is noted that neither party mentions the operating agreement’s provision for arbitration in the case of disputes.

supra.) In this case, petitioners do not make any showing that the alleged deadlock is interfering with Data Palette’s business purposes. Moreover they do not allege facts to defeat respondents’ assertion that the purposes of Data Palette are “feasibly and reasonably” being met. (*In the Matter of 1545 Ocean Ave, supra.*) Indeed, the dispute alleged must be “inimical to achieving the entity’s purpose.” (*In the Matter of 1545 Ocean Ave, supra.*) Upon the foregoing review, the court finds the petition to be facially invalid. As such, this branch of the motion is granted and the petition is dismissed.

Inasmuch as the foregoing contentions called for a genuine analysis of legal issues, the court does not find any element of frivolity as is required for an award of sanctions. It follows that this branch of the motion is denied.

Dated: January , 2011

SIDNEY F. STRAUSS, J.S.C.